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MAR 24 2014

MREC

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION**  
**AND**  
**LINDA A. DRAKE**

Linda A. Drake ("Drake") and the Missouri Real Estate Commission ("MREC") enter into this Settlement Agreement for the purpose of resolving the question of whether Drake's licenses as a real estate broker salesperson, license no. 1999027478, and a real estate broker associate, no. 2008022369, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo, Supp. 2012. The MREC and Drake jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo, Supp. 2012.

Drake acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on their behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Drake may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to her by law, Drake knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Drake acknowledges that she has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Drake stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Drake's licenses as a real estate broker salesperson, license no. 1999027478, and a real estate broker associate, no. 2008022369, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Drake in Part II herein is based only on the agreement set out in Part I herein. Drake understands that the MREC may take further disciplinary action

against her based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

## **I.**

### **Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the MREC and Drake herein jointly stipulate to the following:

1. The Missouri Real Estate Commission (“MREC”) is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo, as amended, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and 339.710 to 339.860, RSMo, as amended, relating to real estate salespersons and brokers.

2. Linda A. Drake (“Drake”) is licensed by the MREC as a real estate broker salesperson, license no. 1999027478. This license is current and active and was so at all times relevant herein. Drake also holds a cancelled license as a real estate broker associate, no. 2008022369.

3. Victorian Realty, LLC was licensed by the MREC as a real estate association, license no. 2004005300. This license was current and active until March 12, 2012, when it was closed.. Victorian Realty, LLC was originally named and licensed as Victorian Realtors, LLC, and then was named Victorian, Realtors, LLC. This entity is referred to herein as “Victorian Realty.”

4. At all time relevant herein, Drake was the designated broker of Victorian Realty, as defined by § 339.710(12), RSMo, Supp. 2012, and as such,

Drake bears responsibility for her own conduct as well as that of Victorian Realty.

Section 339.710(12), RSMo, Supp. 2012, provides in relevant part:

For purposes of sections 339.010 to 339.180, and sections 339.710 to 339.860\*, the following terms mean:

(12) "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of real estate broker as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, limited partnership, association, limited liability corporation, professional corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, limited partnership, association, limited liability company, professional corporation or corporation. Every real estate broker partnership, limited partnership, association, limited liability company, professional corporation or corporation shall appoint a designated broker[.]

5. Drake's real estate license is culpable for the conduct and violations as revealed by the MREC's audit of Victorian Realty pursuant to Rule 20 C.S.R. 2250-8.020, which states:

(1) Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership.

6. References herein to Drake are also references to Victorian Realty.

7. References herein to Victorian Realty are also references to Drake.

8. Between May 14, 2012 and July 13, 2012, an MREC auditor conducted an audit and examination of Drake's and Victorian Realty's business records and

escrow accounts (the “Audit”) for the period of March 2011 through March 2012 (the “Audit Period”).

9. During the Audit Period, Drake and Victorian Realty maintained a bank account in which they held client funds relating to property management. This account was maintained at the Bank of Lee’s Summit, account no. xxxxxxxx4169 (referred to herein as “Property Management Escrow Account”).

### **APPLICABLE LAW**

1. Section 339.100.2, RSMo, Supp. 2012, provides in part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

. . . .

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into her or her possession, which belongs to others;

. . . .

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate,

any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860\*, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860\*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

....

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

2. Section 339.105, RSMo, Supp. 2012, provides in relevant part:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

....

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during

regular business hours at the broker's usual place of business.

3. Section 339.040, RSMo, Supp. 2012, provides in relevant part:

1. Licenses shall be granted only to persons who present, and corporations, associations, or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

4. 20 CSR 2250-8.120 (6) and (7) provides in relevant part (emphasis added):

(6) Each check written on an escrow account or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket ***shall indicate the related real estate transaction(s). Each check written on an escrow account for commission shall be made payable to the licensee*** to whom the commission is owed or to the firm's general operating account.

(7) The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

(emphasis added).

5. 20 CSR 2250-8.220 provides in relevant part:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

(2) All security deposits held by a broker shall be maintained, intact, in an escrow account other than the property management account(s), pursuant to section 339.105, RSMo, unless the owner(s) have agreed otherwise in writing.

....

(6) Fees or commissions payable to a broker must be withdrawn from a property management escrow account at least once a month unless otherwise agreed in writing .

...

### **THE AUDIT**

#### **A. Commingling of funds in the Property Management Escrow Account**

6. The Audit revealed that on at least four (4) instances, there was commingling of funds when Drake wrote checks to herself or took loans from the Property Management Escrow Account, in violation of §§ 339.100.2(1) and 339.105.1, RSMo, and 20 CSR 2250-8.220(1) and 20 CSR 2250-8.120(6), including:

¶	Bank Statement Date	Transfer Amount	Date of Transfer	Recorded Description
a.	5/31/11	(\$350.00)	5/19/11	"Loan" to a business checking account



b.	8/31/11	(\$75.00)	8/19/11	Check #1303 was written to Drake and the memo indicates the check was written for "cash"
c.	10/31/11	(\$70.00)	10/24/11	"Loan" to a business checking account
d.	2/29/12	(\$100.00)	2/17/20(sic)	Check #1337 was written to Drake and the memo indicates the check was written for "cash."

7. Drake's conduct, as set forth in this section A, in failing to maintain and deposit in a special account, separate and apart from her personal or other business accounts, all moneys belonging to others entrusted to her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing, is in violation of and provides cause to discipline Drake's real estate license pursuant to § 339.100.2(1), RSMo.

8. Drake's conduct, as set forth in this section A, in holding funds that belong to another in a separate bank account, the Property Management Escrow Account, but in commingling her personal funds or other funds in this account is in violation of § 339.105.1, RSMo, which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

9. Drake's conduct, as set forth in this section A, in failing to establish and maintain a separate escrow account, the Property Management Escrow Account, for the deposit of current rents and money received from the owner(s) for payment of expenses related to property management, is in violation of 20 CSR

2250-8.220(1), which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

10. Drake's conduct, as set forth in this section A, in writing checks from the Property Management Escrow Account that were not related to real estate transactions is in violation of 20 CSR 2250-8.120(6), which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

**B. Shortages and overdrafts in the Property Management Escrow Account**

11. The Audit revealed that on at least three (3) instances, Drake wrote checks from the Property Management Escrow Account when the balance was not sufficient to cover the disbursement, which resulted in overdrafts to the account, in violation of § 339.105.1, RSMo, and 20 CSR 2250-8.220(1), including:

¶	Bank Statement Date	Shortage Amount	Shortage Date	Overdraft Fee	Overdraft Fee Date
a.	9/30/11	(\$39.96)	9/14/11 – 9/16/11	(\$25.00)	9/14/11
b.	11/30/11	(\$682.90)	11/7/11 – 11/8/11	(\$25.00)	11/7/11
c.	4/30/12	(\$63.16)	4/17/12 – 4/19/12	(\$25.00)	4/17/11

12. Drake's conduct, as set forth in this section B, in creating shortages and in allowing such shortages to occur and to remain in the Property Management Escrow Account demonstrates that Drake failed to maintain the escrow account in violation of § 339.105.1, RSMo, which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

13. Drake's conduct, as set forth in this section B, in making disbursements from the Property Management Escrow Account without ensuring that the account balance is sufficient to cover the disbursements, violates 20 CSR 2250-8.220(1), which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

**C. Failure to account for funds and provide records necessary to determine the adequacy of the Property Management Account**

14. During the Audit, the examiner could not determine if all management fees and/or commissions were removed from the Property Management Escrow Account, in violation of §§ 339.100.2(3) and 339.105.3, RSMo, and 20 CSR 2250-8.120(6) and 20 CSR 2250-8.220(1) and (6). A number of checks were written that indicated they were for management fees, but Drake did not maintain or provide a breakdown to show for which properties the fees were paid. Drake was due a total of \$5,817.70 in management and leasing fees for the Audit Period, but the auditor could only verify that \$2,596.70 was removed, including:

<b>Management Fees/Leasing commissions charged and due</b>													
<b>Property</b>	<b>Apr-11</b>	<b>May-11</b>	<b>Jun-11</b>	<b>Jul-11</b>	<b>Aug-11</b>	<b>Sept-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>	<b>Jan-12</b>	<b>Feb-12</b>	<b>Mar-12</b>	<b>Total</b>
9110 115 <sup>th</sup> Ter.	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	
1601 SW Madison Circle	\$57.00	\$57.00	\$57.00	\$57.00	-	\$741.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	
4028 Bedford	\$90.00	\$80.00	\$90.00	\$90.00	\$90.00	\$90.00	\$90.00	\$90.00	\$90.00	\$90.00	-	\$90.00	
2733 Monroe	\$37.50	\$37.50	\$37.50	\$37.50	-	-	-	\$150.00	-	\$37.50	-	-	
725 NE Swann Cir.	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	\$57.00	
727 NE Swann Cir.	\$57.90	\$57.90	\$57.90	\$57.90	\$57.90	\$57.90	-	\$57.90	\$57.90	\$57.90	\$57.90	-	
<b>Total</b>	<b>\$414.90</b>	<b>\$404.90</b>	<b>\$419.40</b>	<b>\$414.90</b>	<b>\$324.90</b>	<b>\$1065.90</b>	<b>\$809.70</b>	<b>\$531.90</b>	<b>\$381.90</b>		<b>\$291.90</b>	<b>\$324.00</b>	<b>\$5,817.20</b>
<b>Amount of Management Fees Removed</b>													
					\$140.00	\$825.00	\$441.90	\$291.90	\$400.00	\$138.00	\$149.90	\$210.00	<b>\$2,596.70</b>
													Difference: <b>\$3,220.50</b>

15. The Audit revealed that on multiple instances, Drake paid operating expenses for Victorian Realty from the Property Management Escrow Account, but the examiner could not find any of these expenses charged to a property owner. Drake improperly transferred funds to Victorian Realty's brokerage account to write checks to owners, failed to remove management fees, and paid Victorian Realty's bills from the Property Management Escrow Account. There were also numerous additional instances of transfers from the Property Management Escrow Account to "business checking," but these amounts could not be connected to a property owner. Drake's conduct constitutes a violation of §§ 339.105.1 and .3, and 339.100.2(1) and (3), RSMo, 20 CSR 2250-8.120(6), and 20 CSR 2250-8.220(1), including:

¶	Bank Statement Date	Transfer Amount	Date of Transfer	Recorded Description
a.	4/29/11	(\$50.00)	4/12/11	Business Checking
b.	5/31/11	(\$309.59)	5/18/11	AT&T
c.	6/30/11	(\$52.20)	6/14/11	L-1 Enrollment
d.	6/30/11	(\$57.00)	6/15/11	Cell phone
e.	6/30/11	(\$300.00)	6/15/11	Pay bills
f.	7/31/11	(\$170.00)	7/11/11	Business checking
g.	7/31/11	(\$160.00)	7/15/11	Business checking mortgage
h.	7/31/11	(\$37.50)	7/26/11	Business checking
i.	7/31/11	(150.00)	7/29/11	Business checking payroll

¶	Bank Statement Date	Transfer Amount	Date of Transfer	Recorded Description
j.	8/31/11	(\$100.00)	8/5/11	Business checking cover ATM
k.	8/31/11	(\$243.42)	8/12/11	Payment ATT tel
l.	8/31/11	(\$25.00)	8/18/11	Business checking
m.	8/31/11	(\$325.00)	8/18/11	Business checking
n.	8/31/11	(\$40.38)	8/22/11	Business checking
o.	9/30/11	(\$188.25)	9/8/11	Payment AT&T tel
p.	9/30/11	(\$115.00)	9/22/11	Business checking supra
q.	9/30/11	(\$350.00)	9/22/11	Business checking MLS dues
r.	10/31/11	(\$60.82)	10/13/11	Payment ATT tel
s.	10/31/11	(\$70.00)	10/17/11	Business checking
t.	10/31/11	(\$70.00)	10/24/11	Loan to business checking
u.	10/31/11	(\$10.00)	10/24/11	Business checking
v.	1/31/12	(\$204.01)	1/24/11	Payment AT&T tel
w.	2/29/12	(45.00)	2/27/2012	Business checking
x.	4/30/12	(25.00)	4/4/12	Business checking

16. As the designated broker of Victorian Realty, Drake was responsible for the maintenance of books, records, contracts and other necessary documents so that the adequacy of each escrow may be determined at any time and provided to the MREC and its duly authorized agents for inspection at all times during regular

business hours at the usual place of business of Drake and Victorian Realty, pursuant to § 339.105.3, RSMo.

17. As the designated broker of Victorian Realty, Drake was responsible for the maintenance of the escrow accounts, including the Property Management Escrow Account, and for ensuring Victorian Realty's compliance with the statutes and rules related to the brokerage escrow accounts, pursuant to 20 CSR 2250-8.120(7).

18. Drake's conduct, as set forth in this section C, in failing to maintain and deposit in a special account, the Property Management Escrow Account, separate and apart from personal or business accounts, all moneys belonging to others entrusted to Drake while acting as a real estate broker, is in violation of 339.105.1, RSMo, and provides cause to discipline Drake's real estate license pursuant to §§ 339.100.2(1) and 339.100.2(15), RSMo.

19. Drake's conduct, as set forth in this section C, in failing within a reasonable time to account for or to remit any moneys coming into her possession, which belongs to others, is in violation of and provides cause to discipline Drake's real estate license pursuant to § 339.100.2(3), RSMo.

20. Drake's conduct, as set forth in this section C, in failing to provide records necessary to determine the adequacy of the Property Management Escrow Account to the MREC, demonstrates that Drake violated 20 CSR 2250-8.120(7) and § 339.105.3, RSMo, which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

21. Drake's conduct, as set forth in this section C, in writing checks from the Property Management Escrow Account for "management fees" but in failing to identify the related real estate transaction for which the commission applies on the check violates 20 CSR 2250-8.120(6), which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

22. Drake's conduct, as set forth in this section C, in making disbursements from the Property Management Escrow Account to purportedly pay for expenses related to property management incurred on behalf of owners, but in failing to identify for which owners or properties these expenses were paid violates 20 CSR 2250-8.220(1), which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

**D. Drake failed to keep security deposits intact**

23. Per property management agreements, Drake was to hold security deposits for all properties. Pursuant to 20 CSR 2250-8.220(2), Drake was required to hold security deposits in an escrow account other than the property management account. Drake improperly held security deposits in the Property Management Escrow Account.

24. When Drake was closing Victorian Realty, cancellation and mutual release forms were signed by Drake and each property owner. The mutual release outlined monies due to the owners for reserves and security deposits held. Drake calculated the total balance due to all owners, but realized that there were

insufficient funds in Property Management Escrow Account to cover the balance due.

25. Drake had property management agreements for the following properties and agreed to cancel the agreements and return deposits. Drake owed the property owners approximately \$7,565.61, including:

¶	Property Address	Amounts to be returned
a.	4028 Bedford Ave., Independence, MO 64055	\$990.00 (Security Deposit) \$300.00 (Repair Deposits) \$200.00 (Pet Deposit)
b.	725 Swann Circle, Lee's Summit, MO 64086	\$950.00 (Security Deposit) \$300.00 (Repair Deposit)
c.	1601 SW Madison Circle, Lee's Summit, MO 64081	\$950.00 (Security Deposit) \$300.00 (Repair Deposit) \$200.00 (Pet Deposit)
d.	2733 Monroe, Kansas City, MO 64128	\$395.00 (Security Deposit) \$230.71 (Repair Deposit)
e.	9100 NE 116 <sup>th</sup> Ter., Kansas City, MO 64157	\$1000.00 (Security Deposit) \$300.00 (Repair Deposit) \$200.00 (Pet Deposit)
f.	727 NE Swann Circle, Lee's Summit, MO 64086	\$950.00 (Security Deposit) \$300.00 (Repair Deposit)

26. Drake realized that there were insufficient funds in the Property Management Escrow Account to cover the security deposits and reserves due to property owners. On the 3/30/12 bank statement for the Property Management Escrow Account, Drake made deposits of \$6,000.00 on 3/22/12 and \$1,806.00 to cover insufficient funds for the security deposit and owner reserves.

27. Drake's conduct, as set forth in this section D, in failing to maintain all security deposits intact and in an account other than the Property Management



Escrow Account violates 20 CSR 2250-8.220(2), which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(15), RSMo.

28. Drake's conduct, as set forth in this section D, in failing to maintain and deposit in a special account, separate and apart from personal or business accounts, all moneys belonging to others entrusted to Drake while acting as a real estate broker, is in violation of 339.105.1, RSMo, and provides cause to discipline Drake's real estate license pursuant to §§ 339.100.2(1) and 339.100.2(15), RSMo Supp. 2012.

**E. Cause exists for discipline under § 339.100.2(16), RSMo.**

29. Drake's conduct, as set forth in each section of this Settlement Agreement demonstrates that Drake: (1) lacks good moral character, and (2) is not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public, which are grounds for the MREC to refuse to issue a license under § 339.040.1, RSMo, which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(16), RSMo.

**F. Cause exists for discipline under § 339.100.2(19), RSMo.**

30. Drake's conduct, as set forth in each section of this Settlement Agreement, constitutes untrustworthy, improper, and fraudulent business dealings and demonstrates bad faith and gross incompetence, which provides cause to discipline Drake's real estate license pursuant to § 339.100.2(19), RSMo.

## II.

### **Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2012.

31. **Drake's licenses will be revoked effective September 1, 2014 and all indicia of licensure shall be surrendered as of September 1, 2014.**

Drake's licenses as a real estate broker salesperson and broker associate are hereby REVOKED EFFECTIVE SEPTEMBER 1, 2014. ALL INDICIA OF LICENSURE SHALL BE SURRENDERED AS OF SEPTEMBER 1, 2014.

32. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Drake of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

33. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

34. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

35. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

36. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

37. Drake, together with her partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it

survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

38. Drake understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Drake's license. If Drake desires the Administrative Hearing Commission to review this Settlement Agreement, Drake may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

39. If Drake requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Drake's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Drake as allowed by law. If Drake does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Executive Director of the MREC.

LICENSEE

MISSOURI REAL ESTATE  
COMMISSION

Linda A. Drake

Linda A. Drake

Date: March 14, 2014

Janet Carder

Janet Carder, Executive Director

Date: March 25, 2014

**CHRIS KOSTER**

Attorney General



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